

## RESOLUTION NO. 07-29

### RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK APPROVING INFRASTRUCTURE STATE REVOLVING FUND PROGRAM FINANCING NOT TO EXCEED \$681,600 FOR THE COUNTY OF MARIN, MARSHALL PHASE 1 COMMUNITY WASTEWATER SYSTEM ASSESSMENT DISTRICT

WHEREAS, staff of the California Infrastructure and Economic Development Bank ("Staff" and "I-Bank," respectively) has determined that the County of Marin, Marshall Phase 1 Community Wastewater System Assessment District ("Borrower") submitted a timely and complete application ("Application") requesting Infrastructure State Revolving Fund ("ISRF") Program financing for the Marshall Phase 1 Community Wastewater System Project (the "Project"); and

WHEREAS, Staff has determined that the Borrower-proposed financing and Project meet all eligibility requirements contained in Government Code Section 63000 *et seq.* ("Act") and the Criteria, Priorities and Guidelines ("Criteria") for the ISRF Program; and

WHEREAS, in addition to certain preliminary expenditures, the Borrower may pay certain expenditures (the "Reimbursable Expenditures") in connection with the Project prior to the issuance by the I-Bank of indebtedness for the purpose of financing costs associated with the Project on a long-term basis; and

WHEREAS, the I-Bank reasonably expects that a portion of tax-exempt bonds in an aggregate amount not expected to exceed \$681,600 will be issued to finance the costs of the Project and that certain of the proceeds of the tax-exempt bonds will be used to reimburse the Reimbursable Expenditures; and

WHEREAS, Section 1.150-2 of the Treasury Regulations requires the I-Bank to declare its reasonable official intent to reimburse Reimbursable Expenditures for the Project with proceeds of a subsequent borrowing;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank ("Board"), as follows:

**Section 1.** Based upon information presented at the meeting where adoption of this resolution was presented and the staff report presented to the Board, the Board makes the following findings:

(a) Borrower meets the definition of "sponsor" pursuant to Government Code Section 63010 (u) and is thus an eligible recipient of financing;

(b) The Project meets the definition of "public development facility" pursuant to Government Code Section 63010(q) and is thus an eligible project to be financed;

(c) The categories of Project costs proposed to be paid with ISRF Program funds meet the definition of "Costs" pursuant to Government Code Section 63010(f) and thus are eligible for ISRF Program financing;

(d) Borrower adopted a resolution consistent with the requirements of Government Code Section 63041;

(e) Borrower meets the "need for I-Bank financing" and "readiness to proceed" criteria contained in the Criteria;

(f) Borrower and Project are eligible for tax-exempt financing under Federal law, without an allocation of private activity bond volume cap as required in the Criteria;

(g) The Project will not result in a "business relocation" as defined in the Criteria;

(h) The proposed financing complies with the underwriting criteria and sources of loan repayment specified in the Criteria; and

(i) The proposed Project is financially feasible, with all Project funding sources identified and committed.

**Section 2.** The provision of ISRF Program funds to the Borrower, is consistent with the terms and conditions specified in Attachment A to this resolution, is hereby approved. The Chair or the Executive Director and the Secretary are authorized to execute all documents, certificates and other written agreements reasonably necessary to effectuate the described financing. The authority to execute financing documents shall expire automatically two hundred and ten (210) days from the adoption of this resolution.

**Section 3.** This resolution does not constitute a commitment to finance the Project, but instead sets forth the terms and conditions that shall be contained in the financing agreement with the Applicant. It is the understanding that the financing agreement will require considerable conditions and agreements on the part of the Applicant in order to adequately protect the interests of the I-Bank. Attachment A is meant solely to call out terms and conditions specific to this financing, and is not meant as a listing of conditions of sufficient specificity to constitute a commitment to finance.

**Section 4.** This resolution is adopted for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations. This resolution does not bind the I-Bank to make any expenditure, incur any indebtedness, or proceed with the financing of the Project.

**Section 5.** All of the Reimbursable Expenditures covered by this resolution were made not earlier than 60 days prior to the date of this resolution.

**Section 6.** The Board hereby declares its reasonable official intent to use proceeds of tax-exempt bonds to reimburse the Borrower for the Reimbursable Expenditures.

**Section 7.** This resolution shall take effect from and after its adoption.

**PASSED, APPROVED, AND ADOPTED** at a meeting of the Board of Directors of the California Infrastructure and Economic Development Bank on October 2, 2007, by the following vote:

AYES: Matteucci, Lujano, Sheehan, Harvey, Rice

NOES: None

ABSENT: None

ABSTAIN: None

By:   
Stanton C. Hazelroth, Executive Director

ATTEST

By:   
Roma Cristia-Plant, Secretary



## ATTACHMENT A

1. **Borrower:** County of Marin, Marshall Phase 1 Community Wastewater System Assessment District.
2. **Project:** Marshall Phase 1 Community Wastewater System Project.
3. **Amount of Financing:** \$681,600.
4. **Maturity:** Not to exceed 20 years.
5. **Funding Availability:** I-Bank's financing commitment is subject to the availability of funds from either, or a combination of, proceeds of revenue bonds or I-Bank equity funds.
6. **Repayment/Security:** Senior lien on the assessments of the Marshall Phase 1 Community Wastewater System Assessment District including all funds in a debt service reserve fund.
7. **Interest Rate:** 67% of Thompson's Municipal Market Data Index for an "A" rated tax-exempt security with a weighted average life similar to the I-Bank financing based on the rates of September 1, 2007.
8. **Fees:** Financing origination fee of 0.85% of the I-Bank financing and an annual fee of 0.30% of the outstanding principal balance.
9. **Type of Financing Agreement:** Loan Agreement.
10. **Financing Agreement Covenants:** The Loan Agreement shall include, among other things, the following covenants:
  - a. County may request to prepay all or a portion of the financing amount. A request for a reduction is considered a prepayment. The I-Bank shall respond promptly to any prepayment request, and shall make every effort to accommodate the request, subject to the prepayment restrictions of the bonds to which this financing is pledged. Notwithstanding the above, County shall be authorized to prepay all or a portion of the outstanding principal balance according to the following: 102% of the outstanding principal balance if the prepayment date is on or after ten years, but less than eleven years, from the effective date of the Loan Agreement; 101% of the outstanding principal balance if the prepayment date is on or after eleven years, but less than twelve years, from the effective date of the Loan Agreement; or without premium if the prepayment date is twelve years or more from the effective date of the Loan Agreement. County may on any date provide for a legal defeasance of the principal amount outstanding and any additional payment then due.
  - b. An agreement to indemnify the I-Bank and its directors, officers and employees from any liability arising from the Loan Agreement or from construction or operation of the Project.
  - c. County to covenant that any contracts and amendments thereto for the operation and maintenance of the Project shall be acceptable to the I-Bank and may be subject to qualified management rules set forth by the Internal Revenue Service.
  - d. County to acknowledge that the I-Bank may issue Proceeds Bonds to fund all or a portion of the loan and the County shall agree to adhere to requirements allowing the issuance of the Proceeds Bonds and maintaining the tax-exempt status of the Proceeds Bonds.
  - e. Compliance with tax exempt requirements.

**11. Conditions Precedent to Agreement Execution:**

- a. Adopted County resolution committing an additional \$47,274, and authorizing the execution and delivery of the Loan Agreement and approving certain other matters in connection therewith.
- b. Receipt of an opinion of legal counsel to County that the County has the legal authority to enter into the Loan Agreement, that there is no litigation currently pending or threatened that would in any way affect pledged revenues, and that the Loan Agreement is a legal, binding and enforceable agreement of the County.
- c. County will be required to submit a copy of the recorded deed of trust or the escrow settlement statement for the Community Leachfield.

**12. Conditions Precedent to Initial Disbursement:** The following are some of the conditions, which will be required precedent to the initial disbursement of I-Bank funds:

- a. Execution of a Loan Agreement consistent with the terms contained herein.
- b. Documentation acceptable to the I-Bank that the County has recorded a Notice of Special Assessment against each District parcel with unpaid assessments.
- c. Documentation acceptable to the I-Bank that the County has submitted an amortization schedule reflecting payments of principal, interest, and fees to the County Assessor's Office.
- d. Documentation acceptable to the I-Bank that sufficient debt service and administrative assessment amounts are reflected on the 2007-2008 tax roll.
- e. Documentation acceptable to the I-Bank that the County has funded the debt service reserve fund in the amount of \$45,400.
- f. Documentation acceptable to the I-Bank that the County has adopted an On-site Wastewater Disposal Zone fee ordinance producing fee income sufficient to operate and maintain the Project.
- g. The County to provide copies of all initial operation and maintenance contracts acceptable to the I-Bank; some or all of the contracts may be subject to qualified management rules set forth by the Internal Revenue Service.

**13. Conditions Precedent to Initial Construction Disbursement:** The following are some of the conditions, which will be required precedent to the initial construction disbursement of I-Bank funds for each phase of the Project:

- a. Certificate of the County's Administrative Officer, legal counsel or other individual acceptable to the I-Bank that the County has obtained any and all lands, rights-of-ways, lot line adjustments, easements, and orders of possession, which are required for construction and operation of the Project, or a certain phase of the Project.
- b. Certification by the County's Administrative Officer, legal counsel or other individual acceptable to the I-Bank that all required permits have been obtained for the construction of the Project or a certain phase of the Project.
- c. A written statement by the County's Administrative Officer, legal counsel or other individual acceptable to the I-Bank that:
  - i. All construction contracts and subcontracts necessary for the construction of the applicable Project component have been awarded, and were awarded pursuant to competitive bidding and County's procedures normally required for similar construction projects.



- ii. Project costs for the applicable Project component are consistent with the Sources and Uses listed in the Staff Report.
  - iii. All prime construction contracts include a requirement that the contractor maintains appropriate builder's risk insurance and name the County as additional insured and loss payee, require the contractor to maintain liability insurance and name the County as an additional insured, and include performance and payment bond provisions and name the County as additional payee.
  - iv. All construction contracts are let to the lowest responsible bidder at a fixed price subject to increase only for allowable extra work, change orders approved by the County, and damages or delays authorized by the laws of the State.
  - v. All construction contracts require payment of prevailing wage rates and compliance with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the California Labor Code.
  - vi. All construction contracts require payment of workers' compensation insurance by contractors and subcontractors.
  - vii. All construction contracts include the nondiscrimination provisions.
- 14. Conditions Precedent to Final Disbursement:** The following are some of the conditions precedent to final disbursement of I-Bank funds:
- a. Recorded Notice of Completion or other evidence of completion for each Project component.
  - b. Lien waivers for the Project, or passage of the applicable statutory time periods for filing mechanics and other similar liens.
  - c. Certification that the Project has been completed in accordance with the approved plans and specifications, and that the completed Project is consistent with the definition of Project in this Staff Report and is acceptable to the County.
  - d. Certification that the County has obtained all licenses and permits (including operating permits), and approvals from any governmental agency or authority having jurisdiction over the County in connection with the Project.
- 15. Financial and Other Reporting Requirements:**
- a. Audited annual County financial statements for the Marshall Phase 1 Community Wastewater System Assessment District due to the I-Bank within 210 days of fiscal year end.
  - b. Until waived in writing by the I-Bank, County to annually submit evidence acceptable to the I-Bank reflecting sufficient annual debt service and administrative assessment amounts will be reported on the upcoming year's tax roll prior to the schedule's submission to the County Assessor's Office.
  - c. If requested, audited annual financial statements for the County's On-site Wastewater Disposal Zone, due to the I-Bank within 210 days of fiscal year end.
  - d. Other information as the I-Bank reasonably may request from time to time.